

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID SOTO,

Petitioner,

No. CIV S-04-1432 LKK DAD P

vs.

EDWARD S. ALAMEIDA, et al.,

Respondents.

ORDER

_____/
Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On August 3, 2005, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fifteen days. Petitioner has filed objections to the findings and recommendations. Pursuant to the magistrate judge's order, filed on August 30, 2005, respondents have filed a reply.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Based on the new evidence provided by respondents in their reply, the findings and recommendations will not be adopted, the

1 respondents' motion to dismiss will be denied, and respondents will be ordered to file their
2 answer.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The findings and recommendations filed August 3, 2005, are not adopted;
5 2. Respondents' renewed motion to dismiss, filed on February 8, 2005, is denied;

6 and

7 3. Within sixty days from the service of this order, respondents shall file their
8 answer to petitioner's petition for a writ of habeas corpus.

9 DATED: September 20, 2005.

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11 /s/Lawrence K. Karlton
12 UNITED STATES DISTRICT JUDGE
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